

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

LAWRENCE WOODSON SHORT,	§	
	§	
VS.	§	CIVIL ACTION NO. 2:19-CV-067
	§	
JIM KALEN, <i>et al</i>	§	

DEFENDANT HINOJOSA'S ORIGINAL ANSWER

TO THE HONORABLE JASON B. LIBBY, UNITED STATE MAGISTRATE JUDGE:

NOW COMES Defendant Gage Hinojosa, filing his Original Answer to Plaintiff's Prisoner's Civil Rights Complaint, and in support hereof, respectfully shows the Court as follows:

I.

ADMISSIONS AND DENIALS¹

1. Concerning the allegations on page 3, ¶ IV.B., Defendant admits he is an Officer in the Jail Division for the Nueces County Sheriff's Office. Defendant denies that he used excessive force against Plaintiff or violated any of Plaintiff's other constitutional rights.
2. Concerning the allegations on page 4, ¶ V., Defendant agrees Plaintiff was incarcerated in the Nueces County Jail in Unit 4R but disputes the day Plaintiff alleges a use of force incident occurred. Defendant recalls he encountered Plaintiff on June 2, 2018. Defendant admits Plaintiff had returned from the second floor medical when he claimed he had not eaten while down there. Officer Angel Martinez confirmed over the radio that Plaintiff did in fact eat. After relating this fact to Plaintiff, he became irate and refused to "rack up". Officer Martinez escorted Plaintiff to his cell when Plaintiff pulled away. Plaintiff was

¹ This Court ordered Defendant Gage Hinojosa substituted for Officer Benavides (D.E. 34). Defendant Hinojosa's admissions and denials are made as if Plaintiff's original complaint (D.E. 1) alleges Defendant Hinojosa instead of Officer Benavides.

placed on the ground. While Officer Martinez gained control of Plaintiff, Defendant assisted by grabbing Plaintiff's hand to aid in applying restraints. Defendant denies he placed his knee on Plaintiff's back while the restraints were applied. Defendant admits Plaintiff was sent to medical and checked and cleared by Nurse D. Perez. Defendant is without knowledge or information sufficient to admit or deny whether the use of force incident was captured by surveillance video; however, any such recording was erased after 30 days based on the retention policies of the Nueces County Sheriff's Office. Defendant denies all other allegations contained in pages 4, ¶ V.

II.

DEFENSES

3. Defendant did not violate any of Plaintiff's rights, privileges or immunities secured to Plaintiff under the Constitution or laws of the United States or the State of Texas—Defendant's use of force was objectively reasonable.
4. Defendant pleads qualified immunity to Plaintiff's constitutional claims.
5. Defendant is entitled to the preclusions, limitations, and restrictions on damages and exemplary damages imposed by the Constitution and the laws of the United States.
6. Plaintiff has not been injured or, in the alternative, Plaintiff suffered a *de minimis* injury.
7. Plaintiff failed to mitigate his damages, if any.
8. Defendant acted in defense of others and/or himself.
9. Defendant did not intentionally violate Plaintiff's constitutional rights.
10. Defendant failed to exhaust his administrative remedies under the Prison Litigation Reform Act.

III.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays the Court enter judgment that Plaintiff take nothing, Defendant recover costs and attorney fees pursuant to 42 U.S.C. § 1983, and that Defendant be awarded all such other and further relief to which he may be justly entitled.

Respectfully submitted,

LAURA GARZA JIMINEZ
NUECES COUNTY ATTORNEY

/s/Patrick Overman

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ATTORNEYS FOR GAGE
HINOJOSA

NOTICE OF ELECTRONIC FILING

I HEREBY CERTIFY that I submitted electronically for filing a true and correct copy of this document in accordance with the Electronic Case File System of the Southern District of Texas on October 14, 2019.

/s/Patrick Overman
Patrick Overman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was served on October 14, 2019 as follows:

Via USPS by First Class Mail
Mr. Lawrence Short
TDC#2197695
Hughes Unit
Rt. 2 Box 4400
Gatesville, TX 76597

/s/Patrick Overman
Patrick Overman